

DISTRICT OF COLUMBIA
Department of Health
Office of Adjudication and Hearings
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DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

DIANE C. DARCY
Respondent

Case No.: I-00-40140

DECISION AND FINAL ORDER

I. Introduction

By Notice of Infraction served on May 12, 2000, the Government charged Respondent with violating D.C. Code § 2-3305.1, which prohibits practicing dietetics in the District of Columbia without a District of Columbia license. The Notice of Infraction indicates that the Government has interpreted the statute to permit an unlicensed dietitian to practice within the District under the supervision of a dietitian who is licensed here. The Notice alleges that Respondent practiced in the District without being licensed and without being supervised by a licensed dietitian, and seeks a fine of \$500.00.

On May 30, 2000, Respondent filed a timely plea of Admit with Explanation, along with a request that the fine be suspended or reduced. On the same day, I issued an order permitting the Government to file a response to that plea and request within ten days. That deadline has passed and no response has been received. The matter is now ripe for decision and final order.

II. Summary of the Evidence

Respondent states that she was hired as a temporary part-time consultant to assist the full-time dietician at Rock Creek Manor, a facility located at 2131 O Street N.W. She worked for Rock Creek Manor from March 16 to April 16, 2000. Respondent further states that she is a licensed dietician in Maryland and is registered with the American Dietetic Association. She applied for a District of Columbia license in March and expects to hear from the licensing board this month. Before she entered into the consulting arrangement, Rock Creek Manor checked her credentials. Respondent states that she accurately informed the administrator of her licensing status.

Respondent states that she believed a licensed dietician was supervising her. Before she began work, the administrator of Rock Creek Manor told her that the full-time dietician was licensed in the District. The full-time dietician confirmed this, and signed documents as a licensed dietician during Respondent's brief tenure. In fact, the full-time dietician did not have a District of Columbia license, a fact that was discovered after Respondent's service as a consultant for Rock Creek Manor had concluded.

III. Findings of Fact

1. By her plea of Admit with Explanation, Respondent has admitted violating D.C. Code § 2-3305.1.
2. Respondent's violation was unintentional. The unrefuted evidence establishes that she believed that the full-time dietician at Rock Creek Manor held a District of Columbia license. That belief was reasonable, based on the assurances of the

administrator and the dietician herself. Moreover, because the facility checked Respondent's credentials before hiring her, she reasonably believed that it also checked the full-time dietician's credentials when it first employed her.

3. Respondent also reasonably believed that she could practice in the District of Columbia under the supervision of a dietician who held a District of Columbia license. As noted above, the Government itself interprets the statute in this manner.
4. Respondent is not currently in violation, as she stopped working for Rock Creek Manor before being served with the Notice of Infraction.

IV. Conclusions of Law

1. Respondent violated D.C. Code § 2-3305.1.
2. Based upon the unrefuted evidence, suspension of the fine is appropriate. Both the administrator and the full-time dietician told Respondent that the full-time dietician was licensed in the District of Columbia. It is not reasonable to expect a new employee or consultant to check the credentials of her supervisor in the face of both unqualified assurances that the supervisor is licensed and actions by the supervisor consistent with those representations (e.g., signing documents as a registered dietician). Respondent should not be punished for reasonably relying on the misrepresentations of others, and a fine in this case would serve no realistic deterrent purpose.

Therefore, on Respondent's answer and plea, and the entire record in this case, it is hereby, this _____ day of _____, 2000:

ORDERED, that imposition of a fine for Respondent's violation in this case is suspended.

/s/ **6-26-00**

John P. Dean
Administrative Judge